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6 Attorneys for Plaintiff  
 7 Network Video Technologies, Inc.

E-filing

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 APR 29 2008  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
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8  
 9 **IN THE UNITED STATES DISTRICT COURT**  
 10 **NORTHERN DISTRICT OF CALIFORNIA**

11  
 12 **NETWORK VIDEO**  
 13 **TECHNOLOGIES, INC.,**

14 Plaintiff,

15 v.

16 **NITEK INTERNATIONAL, LLC;**  
 and DOES 1-10,

17 Defendants.

CV 08 2208  
 Civil Action No.

**COMPLAINT FOR DECLARATORY  
 JUDGMENT OF PATENT NON-  
 INFRINGEMENT, INVALIDITY AND  
 UNENFORCEABILITY**

**DEMAND FOR JURY TRIAL**

19  
 20  
 21 Plaintiff, NETWORK VIDEO TECHNOLOGIES, INC., by and through its  
 22 undersigned counsel, brings this action against Defendants NITEK  
 23 INTERNATIONAL, LLC and DOES 1-10 and complains and alleges upon  
 24 information and belief as follows:

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#### **JURISDICTION AND VENUE**

1. This is an action for declaratory judgment of non-infringement, invalidity and unenforceability of United States Patent No. 7,193,149.

2. This Court has jurisdiction pursuant to 28 U.S.C. § 2201 et. seq. and 28 U.S.C. §1338(a) et. seq.

3. Venue is proper pursuant to 28 U.S.C. §§ 1391(b), (c) and/or 1400(b).

## **THE PARTIES**

4. Plaintiff, NETWORK VIDEO TECHNOLOGIES, INC. ("NVT"), is a California Corporation in good standing with its principal place of business in this Judicial District at 4005 Bohannon Drive, Menlo Park, California.

5. Defendant, NITEK INTERNATIONAL, LLC (“Nitek”), is an Illinois limited liability doing business in this Judicial District and having its principal place of business at 5410 Newport Drive, Ste. 24, Rolling Meadow, Illinois.

6. Nitek's contacts with the State of California are significant and pervasive. The State of California is a large and important market for the sale of Nitek's products. Nitek has sales representatives and numerous dealers and distributors located in the State of California that market, promote and sell Nitek's products, including those products Nitek claims are covered by the '149 Patent. Nitek has conducted business continuously and systematically in the State of California and in this judicial district for years, and continues that business actively today.

7. Defendants DOES 1-10 are currently unknown to Plaintiff. Plaintiff will amend this Complaint to assert their true names and capacities when ascertained.

8. Defendants, and each of them, are, and at all times herein were, the alter ego, principal, agent, employee, employer, partner, joint venturer, and/or otherwise affiliated with one another so as to be liable in such capacity for the acts and injuries alleged herein.

**FIRST CAUSE OF ACTION**  
**DECLARATORY JUDGMENT**

9. NVT incorporates by reference paragraphs 1-8 as though fully set forth herein.

10. Nitek is the owner of record of United States Patent No. 7,193,149 entitled "System Handling Video, Control Signals and Power" (the '149 Patent). The '149 Patent issued on March 20, 2007.

11. NVT designs, manufactures and sells products for transmitting closed circuit television (“CCTV”) over unshielded, twisted pair (“UTP”) wire in structured cabling networks, such as those that are commonly used in office buildings for telephone systems and computer networks. NVT’s products enable the use of UTP wire in structured cabling systems for video security cameras and security camera system applications (“CCTV systems”). They enable electric power, video signals and data signals to be transmitted over UTP wire. NVT is considered the premier supplier of “power/video/data” twisted pair solutions (PVD<sup>™</sup>) for the CCTV industry.

12. Like NVT, Nitek sells products for transmitting CCTV over UTP cabling, which include those products Nitek sells under the name “UTPLinks”. NVT and Nitek are direct competitors.

13. Nitek broadly claims the '149 Patent covers the use of UTP structured cabling for CCTV applications. Nitek also claims that the '149 Patent covers the "core technology" of its UPTLinks products, which are the products that Nitek sells in competition with NVT's products.

14. Prior to the issuance of the ‘149 Patent, Nitek did not correspond or communicate directly with NVT, by email or otherwise. However, after the ‘149 Patent issued, Nitek immediately e-mailed NVT about Nitek’s newly issued ‘149 patent. That e-mail, written by Nitek’s president and founder and presented as a patent news release, included notice about Nitek’s ‘149 Patent and alleged that the ‘149 Patent covered the use of structured cabling for CCTV, for which NVT and

1 Nitek are direct competitors. Nitek also sent that same e-mail including the same  
2 patent news release directly to NVT's customers and sales representatives.

3 15. Nitek's statements about the '149 Patent and its alleged sweeping scope  
4 caused NVT's customers and sales force to become worried about the legal risks  
5 associated with selling NVT's products and product solutions. Anixter, Inc., an  
6 important customer of NVT and the co-owner of the '149 patent when it issued, also  
7 expressed its concern that NVT might face a claim patent infringement by Nitek.

8 16. Nitek, through its agents, also told NVT sales representatives that Nitek  
9 intended to enforce the '149 Patent against competitors and intimated that NVT was a  
10 target.

11 17. Nitek also then attempted to extract royalties from NVT in exchange for  
12 a license to the '149 patent.

13 18. By its actions and statements that the '149 Patent covered the technology  
14 in NVT's competing products, product solutions, and product uses, Nitek sought to,  
15 and did, create a cloud on the competitive environment and the business community,  
16 including with NVT's customers and sales representatives.

17 19. Nitek also presented an onerous written patent license agreement to NVT  
18 for the '149 Patent. Under that license agreement, Nitek sought to severely restrict  
19 NVT's competing business and to provide Nitek with a competitive advantage over  
20 NVT.

21 20. According to Nitek, the NVT products that are at-issue include, but are  
22 not limited to, NV-16PS13-PVD, NV-16PS10-PVD, NV-8PS13-PVD, NV-704J-  
23 PVD, NV-716J-PVD, NV-216A-PV and NV-218A-PVD) and all "combiners" that  
24 combine power, video and data and all "distributors" which handle power and video.

25 21. NVT believes that the '149 patent is invalid, unenforceable and not  
26 infringed, and that NVT does not require a license to the '149 patent.

27 22. NVT denies infringing '149 Patent and asserts it has the right to  
28 manufacture and sell its products, including those described above.

23. NVT further asserts the '149 Patent is invalid under Title 35 of the United States Code.

24. NVT further asserts that the ‘149 Patent is unenforceable due to inequitable conduct by the applicants and/or their representatives and/or agents during the prosecution of the application for the ‘149 Patent. That inequitable conduct includes making knowingly false statements about prior art to obtain allowance of the ‘149 Patent claims. Specifically, false statements were included in, at least ¶¶ 7 and 8 of the Declaration of William C. Curran (“Curran Declaration”) dated November 30, 2006 and on pages 11 and 12 in the Remarks section of the papers submitted to the Patent Office with the Curran Declaration.

25. As a result of all of the foregoing, and in light of all the relevant circumstances, there is a substantial controversy of sufficient immediacy and reality between NVT and Defendants as to: (1) Defendants' rights under the '149 Patent; (2) the validity, enforceability, and scope of the '149 Patent; and (3) whether any of NVT's products infringe any valid claims of the '149 Patent, so as to warrant the issuance of a declaratory judgment by this Court.<sup>1</sup>

26. The court should exercise its broad discretion to adjudicate this action under the Declaratory Judgment Act. There is no better or more effective remedy for resolving the present controversy. Such an adjudication will serve the underlying purposes behind the Declaratory Judgment Act, including clarifying the parties legal relations and settling the controversy between the parties with certainty and finality.

## **DEMAND FOR RELIEF**

**WHEREFORE**, Plaintiff asks this Court to:

a. Enter judgment for Plaintiff that the '149 Patent is invalid and unenforceable;

<sup>1</sup> Plaintiff originally sued in the United States District Court for the Central District of California, Case No. CV-07-4789 AHM (RZx). While the District Court determined that there was a controversy sufficient to warrant declaratory relief, the Court dismissed the case without prejudice on discretionary grounds believing that venue in the Central District was tenuous.

- 1        b. Enter judgment for Plaintiff of non-infringement;  
2        c. Award Plaintiff its reasonable attorneys' fees and costs; and  
3        d. Award Plaintiff such other and further relief as is just and proper.

4

5                      DATED: April 28, 2008

6

Respectfully submitted,  
**THE HECKER LAW GROUP, PLC**

7                      By:

8                      Gary A. Hecker, Esq.

9                      James M. Slominski, Esq.

10                     Attorneys for Plaintiff  
11                     Network Video Technologies, Inc.

12                     **DEMAND FOR TRIAL BY JURY**

13                     Pursuant to FRCP 38, Plaintiff hereby demands a trial by jury.

14

15                      DATED: April 28, 2008

16

Respectfully submitted,  
**THE HECKER LAW GROUP, PLC**

17                      By:

18                      Gary A. Hecker, Esq.

19                      James M. Slominski, Esq.

20                     Attorneys for Plaintiff  
21                     Network Video Technologies, Inc.

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JS 44 (Rev. 12/07) (cand rev 1-16-08)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

## I. (a) PLAINTIFFS

Network Video Technologies, Inc.

## DEFENDANTS

Nitek International, LLC and DOES 1-10

(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Gary A. Hecker, James M. Slominski  
The Hecker Law Group, PLC  
1925 Century Park East, Suite 2300  
Los Angeles, California 90067

ADR  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- |  |  |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)   |

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	PERSONAL INJURY	PERSONAL INJURY	610 Agriculture	400 State Reapportionment
120 Marine	310 Airplane	362 Personal Injury—Med. Malpractice	422 Appeal 28 USC 158	410 Antitrust
130 Miller Act	315 Airplane Product Liability	365 Personal Injury — Product Liability	423 Withdrawal 28 USC 157	430 Banks and Banking
140 Negotiable Instrument	320 Assault, Libel & Slander	368 Asbestos Personal Injury Product Liability	450 Commerce	450 Deportation
150 Recovery of Overpayment & Enforcement of Judgment	330 Federal Employers' Liability	370 Other Fraud	460 Racketeer Influenced and Corrupt Organizations	470 Consumer Credit
151 Medicare Act	340 Marine	371 Truth in Lending	480 Cable/Sat TV	490 Selective Service
152 Recovery of Defrauded Student Loans (Excl. Veterans)	345 Marine Product Liability	380 Other Personal Property Damage	810 Securities/Commodities/ Exchange	850 Other Statutory Actions
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	385 Property Damage Product Liability	875 Customer Challenge 12 USC 3410	890 Agricultural Acts
160 Stockholders' Suits	355 Motor Vehicle	360 Other Personal Injury	861 HIA (1395ff)	892 Economic Stabilization Act
190 Other Contract	PERSONAL PROPERTY	PRISONER PETITIONS	862 Black Lung (923)	893 Environmental Matters
195 Contract Product Liability	370 Other Fraud	510 Motions to Vacate Sentence Habeas Corpus:	863 DIWC/DIWW (405(g))	894 Energy Allocation Act
196 Franchise	371 Truth in Lending	530 General	864 SSID Title XVI	895 Freedom of Information Act
REAL PROPERTY	380 Other Personal Property Damage	535 Death Penalty	865 RSI (405(g))	900 Appeal of Fee Determination
210 Land Condemnation	385 Property Damage Product Liability	540 Mandamus & Other	FEDERAL TAX SUITS	Under Equal Access to Justice
220 Foreclosure	390 Other Civil Rights	550 Civil Rights	870 Taxes (U.S. Plaintiff or Defendant)	950 Constitutionality of State Statutes
230 Rent Lease & Ejectment	441 Voting	555 Prison Condition	871 IRS—Third Party 26 USC 7609	
240 Torts to Land	442 Employment			
245 Tort Product Liability	443 Housing/ Accommodations			
290 All Other Real Property	444 Welfare			
	445 Amer. w/Disabilities - Employment			
	446 Amer. w/Disabilities Other			
	440 Other Civil Rights			

## V. ORIGIN (Place an "X" in One Box Only)

- |   |   |  |   |   |   |   |
|---|---|--|---|---|---|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | Appeal to District Judge from Magistrate Judgment |
|---|---|--|---|---|---|---|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 2201 et seq.

Brief description of cause:

Declaratory Judgment of Non-Infringement, Invalidity and Unenforceability of U.S. Patent No. 7,193,149

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23      DEMAND \$      CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

## VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE". CV-07-4789 AHM(RZx), Central District of California, Honorable A. Howard Matz

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)  
(PLACE AND "X" IN ONE BOX ONLY)

DATE 4/28/08

SIGNATURE OF ATTORNEY OR RECORD

 SAN JOSE